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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

GARG, YOGESH C

ART UNIT PAPER NUMBER

3625

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/867,174

Applicant(s)

SCHEER, ROBERT H.

Examiner

Yogesh C Garg

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Appeal Brief***

1. In view of the Appeal Brief filed on 2/28/2005, PROSECUTION IS HEREBY REOPENED. New Grounds of Rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Currently claims 11-20 are pending for examination.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-20 are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter.

Claims 11-20 are directed to disembodied data structure claim which are per se

Art Unit: 3625

not statutory. C.f. In re Wamerdam. The preamble of the independent claim 11 and all its dependencies are directed to "a computer readable medium having instructions for use for selecting a fulfillment plan". The instructions could be in mere text form which are not executable by a processor. The examiner suggests to redraft the claims to include a computer readable medium so that the claimed instructions are --executable by a computer or processor. **A claim to a computer readable medium encoded with functional descriptive material that can function with a computer to effect a practical application that results in a useful, concrete and tangible result (i.e. running an assembly line or executing a stock transaction) satisfies Section 101.** See U.S. Patent 5,710,578 to Beauregard etc. i.e., **a set of instructions in combination with a computer system.** C.f. In re Wamerdam - data structure stored in a computer memory, and In re Lowery, 32 USPQ2d 1031 (Fed. Cir. 1994) - data structure in a computer readable medium. Examples of Statutory Functional Descriptive Material are:

(a) A claimed computer-readable medium encoded with a functional data structure – this defines structural and functional relationships between the data structure and the hardware/software components. See Wamerdam.

(b) A claimed computer-readable medium encoded with a computer program - this defines structural and functional relationships between the computer program and the computer itself which allows the program's functionality to be realized provided that a useful, concrete and tangible result is realized. See U.S. Patent 5,710,578 to Beauregard et al.

Art Unit: 3625

Data merely stored in a computer readable medium to be read or outputted by a computer without any functional interrelationship, and thus do not impart functionality to the computer, i.e., they are not computer components. Examples of Non-Functional Descriptive Material :Music, Literature, Art, Photographs, Data base per se are directed to neither a "process" nor a "machine," but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. *Id.* at 1551.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 11-12, 14-18 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Altendahl et al. (US Patent 6,571,213 B1) hereinafter referred to Altendahl.

Regarding claim 11, Altendahl teaches a computer readable media having instructions, executable by a computer, for use in selecting a fulfillment plan for moving

Art Unit: 3625

an item within a supply chain (see at least Fig.1 and page col.3, lines 15-31, where, “shipping manager 10” computer program when executing under Windows 95 operating system and executed on a server”), the instructions performing steps comprising:

receiving an order for an item (see at least col.3, lines 32-46 which discloses that a seller’s employee receiving an order for business systems-computers);

in response to receipt of the order for the item constructing a plurality of alternative fulfillment plans for moving the item from a sourcing point to one or more geographic locations within the supply chain (see at least col.4, line 17-col.5, line 35 which discloses that in response to receiving an order and entering the order into the shipping manager’s system [10], the shipping manager 10 first generates alternative fulfillment plans for moving the item from its manufacturing/assembly point to the destination point by generating alternative choices of routes, such as Alpha, Bravo and Delta);

evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria and selecting for implementation one of the constructed plurality of alternative fulfillment plan that most closely meets the predetermined criteria, the selected one of the plurality of alternative fulfillment plan being used to position the item at a geographic location within the supply chain thereby making the item available for use in meeting the order (see at least col.5, line 50-col.6, line 25 which discloses that the alternative generated routing choices are subjected to evaluation on the basis of business rules [predetermined criteria] such as “ if a shipment is going to Chicago, then

Art Unit: 3625

use Alpha Freight Service or If expected delivery is Sunday, then use Bravo Freight Service....., see col.4 lines 17-61 ).

Regarding claim 12, Altendahl teaches further using a customer specified level of service when constructing the plurality of alternative fulfillment plans (see at least col.4 lines 17-61, wherein the a customer specifies the criteria such as " if a shipment is going to Chicago, then use Alpha Freight Service or If expected delivery is Sunday, then use Bravo Freight Service....., and " the business system is to be shipped so as to arrive no later than two weeks from the date of the order.....and other wise is to be shipped as inexpensively as possible.... ".

Regarding claim 14, Altendahl teaches further using a customer specified point of delivery when constructing the plurality of alternative fulfillment plans (see at least col.4 lines 17-32, wherein the a customer specifies the criteria such as " if a shipment is going to Chicago, then use Alpha Freight Service..". The specified point of delivery is Chicago.).

Regarding claim 15, Altendahl teaches further comprising the step of using a customer specified delivery date when constructing the plurality of alternative fulfillment plans (see at least col.4 lines 56-61, wherein the a customer specifies the criteria such as " the business system is to be shipped so as to arrive no later than two weeks from the date of the order.....").

Regarding claim 16, Altendahl teaches further comprising the step of using various combinations of sourcing points within the supply chain when constructing the plurality of alternative fulfillment plans (see at least col.7, line 50-col.8, line 32 , “ .....the planning system 11 invokes a consolidator [module] 25..... In attempting to consolidate shipments, the consolidator module 25 searches the batch shipments for all shipments having matching required properties. Usually these will include the shipper, consignee.....”. Note: Considering the shippers and consignees in determining consolidating the shipment corresponds to using various combinations of sourcing points.).

Regarding claim 17, Altendahl teaches further comprising the step of using customer specified consolidation requirements when constructing the plurality of alternative fulfillment plans (see at least col.7, line 50-col.8, line 32 , “ .....the planning system 11 invokes a consolidator [module] 25.....”).

Regarding claim 18, Altendahl teaches further comprising the step of using activity costs when constructing the plurality of alternative fulfillment plans (see at least col.4 lines 56-61, wherein the a customer specifies the criteria such as the business system is to be shipped so as to arrive no later than two weeks from the date of the order.....**and other wise is to be shipped as inexpensively as possible.....**”).



Art Unit: 3625

Note: Considering an inexpensive shipment as far as possible corresponds to using activity cost in constructing alternative fulfillment plans. ).

Regarding claim 20, Altendahl teaches further comprising the step of using a customer specified price quote when evaluating the constructed plurality of alternative fulfillment plans against a predetermined criteria (see at least col.3, lines 32-54 which discloses that all the terms of order including charge terms, payment terms, etc. are considered while inputting the order terms into shipping manager 10 program and then generating alternative fulfillment plans for selecting the routing paths and the ultimately the optimal selection based upon a predetermined criteria, that is the order terms including charge terms, payment terms, etc. . Note: using the order terms including charge terms, payment terms, etc. satisfies the claimed limitation.).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4.1. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Altendahl in view of Dietrich et al. ( US Patent 5,216,593) hereinafter referred to Dietrich.

Regarding claim 13, Altendahl discloses a computer readable medium having

Art Unit: 3625

instructions to construct alternative fulfillment plans in response to an order and then evaluate and select a plan to meet the predetermined criteria, as analyzed above in claim 11. Altendahl does not disclose the use of branch and bound technique to determine candidate sourcing points for the item when constructing the plurality of alternative fulfillment plans. However, Dietrich teaches the use of branch and bound technique in the same field of endeavor, that is computerized production planning, logistics, scheduling, distribution and resource allocation (see at least abstract). In view of Dietrich, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Altendahl to incorporate the feature of using branch and bound technique to determine candidate sourcing points for the item when constructing the plurality of alternative fulfillment plans because, it is a proven technique to provide optimal resource allocation producing the maximum benefit (see the last two sentences of the abstract).

4.2. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Altendahl in view of Landvater ( US Patent 6,609,101 B1).

Regarding claim 19, Altendahl discloses a computer readable medium having instructions to construct alternative fulfillment plans in response to an order and then evaluate and select a plan to meet the predetermined criteria, as analyzed above in claim 11. Altendahl does not disclose the step of using inventory age when constructing the plurality of alternative fulfillment plans. However, Landvater in the same field of a retailers stores supply chain, teaches the step of using inventory age when constructing

Art Unit: 3625

the plurality of alternative fulfillment plans (see at least col.18, line 25-col.19, line 36 which discloses to check for the availability of excess inventory so that if it is there then there is no need for planned replenishment shipment for the company). In view of Landvater, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Altendahl to incorporate the feature of using inventory age when constructing the plurality of alternative fulfillment plans because, it will help the company who received the order for business systems to use the excess inventory to meet the demands of the order without having to plan for replenishment in future.).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

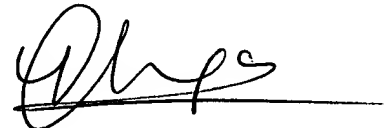
(i) US Patent 6,801,901 to Ng discloses a computerized system and method for building and improving the quality of inventory load configuration, such that in one embodiment designating a portion of the inventory as priority units and then distributing the priority units to the desired destinations by displaying and viewing the information on a graphical user interface.

Art Unit: 3625

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 571-272-6756. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yogesh C Garg  
Primary Examiner  
Art Unit 3625

YCG  
May 13, 2005